

## REMARKS

Claims 44-49, 66-69, and 70-71 remain in this application. Claims 36-43 and 50-65 have been withdrawn. Claims 44, 46, 47, and 66 have been amended. Claims 70-71 have been added. The Applicants respectfully request reconsideration of this application in view of the above amendments and the following remarks.

### 35 U.S.C. §112 Rejection

The Examiner has rejected claim 46 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 46 has been amended herein to overcome the reason for rejection.

### 35 U.S.C. §102(a) Rejection - Kistler

The Examiner has rejected claims 44-49 and 66-69 under 35 U.S.C. §102(a) as being anticipated by Thomas Kistler, "Continuous Program Optimization", 1999, Ph. D. thesis, Department of Information and Computer Science, University of California, Irvine, CA (hereinafter referred to as "Kistler").

As amended, claim 44 recites a method comprising "*running executable code; collecting profile data while the executable code is running, wherein said collecting the profile data comprises **sampling the running of the executable code at a controlled rate**; when the CPU is idle, processing the profile data; and recompiling software based on the processed profile data.*"

Kistler does not teach or suggest collecting profile data including sampling the running of the executable code at a controlled rate. Accordingly, claim 44 and its

dependent claims are believed to be allowable. Independent claims 47 and 66, and their respective dependent claims, are also believed to be allowable.

### **Conclusion**

In view of the foregoing, it is believed that all claims now pending patentably define the subject invention over the prior art of record and are in condition for allowance. Applicants respectfully request that the rejections be withdrawn and the claims be allowed at the earliest possible date.

### **Request For Telephone Interview**

The Examiner is invited to call Brent E. Vecchia at (303) 740-1980 if there remains any issue with allowance of the case.

### **Request For An Extension Of Time**

The Applicants respectfully petition for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17 for such an extension.

### **Charge Our Deposit Account**

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,  
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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Brent E. Vecchia  
Brent E. Vecchia  
Reg. No. 48,011

12400 Wilshire Boulevard  
Seventh Floor  
Los Angeles, California 90025-1030  
(303) 740-1980